IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 146 OF 2007

IN

SUIT NO. 2919 OF 2004

Central Bank of India .... Plaintiffs

Versus

Ramrao Mahadeo Desai & Ors. .... Defendants

And

Nasir Hussein Inamullah Khan .... Applicant.

Mr. O.A. Das Advocate for Plaintiffs.

Mr. J.P. Singh for Applicant.

K.A.J. Merchant holding for P. Ramchandran for defendants.

Mr. C.R. Bhogaonkar, 2nd Assistant to Court Receiver.

CORAM : SMT. R.S. DALVI, J.

DATE : 2ND FEBRUARY, 2007

P.C.

1) Chamber summons is made returnable forthwith and by consent disposed of alongwith Court Receiver's

Report.

2) The Plaintiff-Bank has secured a mortgage for suit flat no. 103 in 'A' Wing of the building Shehazadi Castles, at village Kausa, Mumbra, Dist. Thane under the registered Agreement for Sale dtd. 17/9/2001 for Rs.6,08,000/-. Court Receiver has been appointed and found that third party was in possession of the said suit flat. That party is the applicant in the aforesaid Chamber Summons who refused to execute the undertaking to act as agent of the Court Receiver. The applicant has taken out this Chamber Summons for vacating the order of appointment of Court Receiver dtd. 22/8/2006 and for other reliefs. He seeks to vacate the order on the premise that the applicant has entered into an agreement dtd. 8/10/2001 with the builder. The agreement for sale is not registered. It is stated to be for a consideration of Rs.3,60,000/- paid in three instalments of Rs.50,000/-, Rs.1,00,000/- and Rs.2,10,000/-. All these considerations are paid in cash. The Receipt clause annexed to the Agreement itself is not executed. Since the agreement is not registered and the consideration amount is not paid, there is absolutely no evidence to show its execution.

3) The applicant has relied upon his ration card, Exhibit 'E'. The Original is not produced. The applicant has also relied upon the electricity connection obtained by him. Though the agreement is of

the year 2001, the application for electricity connection is made in the year 2005. Only one electricity bill is stated to be issued to the applicant i.e. of August 2006. The title of the applicant is not clear at all. The possession of the applicant is not shown to be legal. The Court Receiver is shown to be correctly appointed. In fact applicant's application itself makes out a case for appointment of Court Receiver to prevent the suit property from being wasted.

4) The applicant's Chamber Summons is dismissed. The Court Receiver's Report is granted. Unless the applicant executes the usual undertaking as well as the agreement with the Court Receiver within the period of two weeks from today and deposits with the Court Receiver all the usual royalties and compensation as required by the Court Receiver, the Court Receiver shall take physical possession of the suit premises with the help of Police, if necessary.

(R.S. DALVI, J.)